**STATE OF MICHIGAN**

**DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS**

**OFFICE OF FINANCIAL AND INSURANCE REGULATION**

**Before the Commissioner of Financial and Insurance Regulation**

**In the matter of**

**XXXXX**
**Petitioner**

**v** **File No. 120159-001**

**Blue Cross Blue Shield of Michigan**
**Respondent**

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**Issued and entered**
**this _7th_ day of September 2011**
**by R. Kevin Clinton**
**Commissioner**

# ORDER

## I. PROCEDURAL BACKGROUND

On March 21, 2011, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The Commissioner reviewed the request and accepted it on March 28, 2011.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on April 1, 2011.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate. Rider CBC 40% NP (Community Blue Copayment Requirement 40% for Nonpanel Services)* also applies.

The Commissioner reviews contractual issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

## II. FACTUAL BACKGROUND

In December 2010, Petitioner underwent surgery to repair a hernia. Her care was provided at a participating hospital but her surgeon is not a BCBSM participating provider. The sur-

geon submitted three claims for his services for the period December 13 to 15, 2010. The claims and BCBSM calculation of its payment and Petitioner's copayment are in the table below.

| SERVICE DATE | SURGEON'S CHARGE | BCBSM'S APPROVED AMOUNT | PETITIONER'S COPAYMENT (40% of Approved Amt) |
|---|---|---|---|
| 12/13/10 | 534.00 | 369.00 | 147.60 |
| 12/14/10 | 189.00 | 150.00 | 60.00 |
| 12/15/10 | 900.00 | 900.00 | 360.00 |
| TOTALS | $1,623.00 | $1,419.00 | $567.60 |

BCBSM paid the surgeon its approved amount after deducting the Petitioner's copayment from its approved amount. The Petitioner did not feel BCBSM should have required her to pay a copayment because her surgery was done on an emergency basis and she had no time to find a BCBSM participating surgeon.

The Petitioner appealed BCBSM's decision through BCBSM's internal grievance process. BCBSM held a managerial-level conference on February 21, 2011, and issued a final adverse determination dated March 7, 2011. The amount at issue in this appeal is $567.60.

## III. ISSUE

Did BCBSM pay the correct amount for the Petitioner's surgery?

## IV. ANALYSIS

BCBSM's Argument

The Petitioner's surgeon does not participate with BCBSM and is not a member of any Blue Cross Blue Shield provider panel. Consequently, his services are subject to the 40% copayment provided for in *Rider CBC 40% NP* unless one of the following provisions listed in Section 4 (Page 4.31) of the certificate is met:

- A panel provider refers you to a nonpanel provider
  **NOTE**: you must obtain the referral **before** receiving the referred service or the service will be subject to the nonpanel copayment requirement.
- You receive services for the initial exam and treatment of a medical emergency or accidental injury in the outpatient department of a hospital, urgent care center or physician's office
- You receive services from a provider for which there is no PPO panel
- You receive services from a nonpanel provider in a geographic area of Michi-

> gan deemed a "low-access area" by BCBSM for that particular provider specialty.

BCBSM believes that none of the copayment exceptions listed above apply in the Petitioner's case. Therefore, BCBSM argues that the amount it reimbursed for her surgery was correct.

Petitioner's Argument

Petitioner says that she had an emergency and went to a hospital that participates with Blue Cross. BCBSM denied network coverage for the surgeon's fees indicating that Petitioner could have been referred to a network surgeon. The Petitioner argues that this is not true as she was in no position to shop around nor was it her choice to wait for a participating doctor.

The Petitioner does not feel that she should be required to pay a nonpanel copayment since her care was for an emergency and she had no choice of providers.

Commissioner's Review

The Petitioner's certificate and *Rider CBC 40% NP* provide that, if care is received from providers who are not part of BCBSM's panel, a 40% copayment is applied. BCBSM paid its approved amount less the 40% coinsurance requirement of $567.40.

The Petitioner argues that she meets one of the exceptions to the copayment rules since her care was provided on an emergency basis. However, this exception only applies to services related to the initial exam that are provided in outpatient department of a hospital (i.e., the emergency room). This does not apply in Petitioner's case since her surgery was provided on an inpatient basis not as part of the initial emergency treatment, with additional care continuing for several days after she first went to the hospital. Therefore, the Petitioner's hernia surgery does not meet any of the copayment exceptions provided for in the certificate. BCBSM is not required to pay any additional amount for this care.

The Commissioner finds that BCBSM's application of a copayment for the Petitioner's surgery is consistent with the terms of the certificate and rider.

## V. ORDER

BCBSM's final adverse determination of March 7, 2011, is upheld. BCBSM is not required to pay any additional amount for the Petitioner's December 2010 surgery.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this order may seek judicial review no later than sixty days from the date of this order in the circuit court for the county where the covered person resides or in the circuit court of

Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.

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R. Kevin Clinton
Commissioner